

You May Have Recourse When a Court Denies Your Board Attorneys' Fees

July 19, 2013 — Collections have become an area of increasing concern for condominium associations, as some unit owners struggle to pay their common charges on time and in full. As unit owners' debt continues to rise, associations are left with few options to collect: a lien on the unit and a lawsuit against the individual unit owner.

Many condo associations have been frustrated in their attempts to collect from a unit owner individually, as judges are often sympathetic to delinquent unit owners, offering extensions, scrutinizing certifications of amounts due and reducing or eliminating the association's ability to collect attorneys' fees.

Grandview at Riverwalk Port Imperial Condominium Association in West New York, N.J., is one such association, but its frustrations were recently assuaged on appeal in *Grandview at Riverwalk Port Imperial Condominium Association, Inc. v. Han*. While this case is specific to New Jersey and its statutes, the larger lesson is that it is worth exploring the possibility that a court erred in not granting attorneys' fees to your condo association.

In this case, the association sued a unit owner for failure to pay common charges (called "maintenance fees" or "common assessments" in New Jersey, to be very precise), only to have the Special Civil Court inexplicably deny its demand for attorneys' fees.

As the court wrote:

- "Plaintiff, a condominium association, sued defendants, owners of a condominium unit, to recover unpaid maintenance fees. Defendants defaulted, and plaintiff filed an application for default judgment. The application was supported by a copy of the Association's master deed and by-laws, which both specifically provide that the Association can recover counsel fees for actions against unit owners to collect unpaid maintenance fees. Without explanation, the Special Civil Part judge crossed out the section of plaintiff's proposed form of order that would have awarded \$1,730.47 in counsel fees."

The Association appealed the judge's rejection of its demand, and the Appellate Division reversed the Special Civil Court, finding that the fees were authorized by statute and by the Association's governing documents. Noting that the unit owner had not objected to the reasonableness of the attorneys' fees and that the Appellate Division itself perceived "nothing unreasonable" in the attorneys' fees, the Appellate Division remanded the matter to have the judgment amended to include the attorneys fees.



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